

## REGION 6 EXECUTIVE SUMMARY

TOPIC: Texas Regional Haze Status and Litigation

DATE: July 19, 2019

CONTACT: Michael Feldman x9793

### BACKGROUND:

- On August 28, 2018, we proposed to affirm the October 2017 Texas intrastate SO<sub>2</sub> trading program BART FIP, and solicited comments on certain aspects. As stated in our letter in response to a petition dated April 30, 2018, we believed certain specific aspects of the federal plan could benefit from further public comment.
- Inter-related cases in the Fifth Circuit, D.C. Circuit, and D.C. District Courts are all currently in abeyance. EPA action on Texas BART is subject to a Consent Decree, and the D.C. District Court has been ordering 60-day status reports. The next status report is due in August 2019.
- EPA is preparing a supplemental proposal for the Texas intrastate SO<sub>2</sub> trading program BART FIP. We are proposing modifications to the program to strengthen the requirements in response to comments.
- The rationale supporting a Texas-only SO<sub>2</sub> trading program for BART was that the trading program would result in SO<sub>2</sub> emissions from Texas EGUs similar to emissions anticipated under CSAPR: if CSAPR > BART nationwide, then “Texas-only program + CSAPR” > BART nationwide. Proposed modifications would address limits to total annual emissions allowed under the program.
- The Texas trading program implementation began on January 1, 2019.

### Interaction with “CSAPR Still Better than BART”:

- In September 2017 rulemaking EPA removed Texas from the annual NO<sub>x</sub> and SO<sub>2</sub> trading programs in response to the DC Circuit Court’s remand of several CSAPR SO<sub>2</sub> budgets.
- We concluded that CSAPR remained better-than-BART despite the removal of Texas. This conclusion was based on the fact that if we were re-doing the 2012 CSAPR better than BART analysis, Texas would not have been a CSAPR state and should be considered to be implementing presumptive BART like other non-CSAPR states in the analysis.
- We received comments and later a petition concerning emission shifting and the assumption of presumptive BART for Texas for the purposes of the analysis.
- Texas is relying on the CSAPR Still Better than BART finding to satisfy NO<sub>x</sub> BART for Texas EGUs

### Current Status:

- On May 9, staff from EPA Region 6 met with staff from TCEQ to discuss the comments and options EPA is considering for the Texas intrastate SO<sub>2</sub> trading program to address the comments and finalize the rule.
- On June 19, Region 6, OAQPS and OGC briefed OAR senior management on proposed modifications to the trading program.

- Region 6 continues to work with OGC, OAQPS, and TCEQ to develop a supplemental proposal including proposing an assurance level to limit total annual emissions allowed under the program.

#### **Previous Actions on Texas Regional Haze:**

- Texas Regional Haze SIP: Regional Haze SIPs were due from states by December 17, 2007. Texas submitted their regional haze SIP on March 31, 2009. This SIP included a reliance on Texas' participation in the Clean Air Interstate Rule (CAIR) as an alternative to Best Available Retrofit Technology (BART) for sulfur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>) emission from Electric Generating Units (EGUs).
- Limited Disapproval: However, because CAIR was remanded by the D. C. Circuit, EPA issued a limited disapproval of all state SIPs that relied on CAIR in 2012.
- Texas Regional Haze Rule Requirements other than EGU BART (Reasonable Progress Federal Implementation Plan [FIP]): EPA acted on all non-EGU BART aspects of the 2009 Regional Haze SIP in January 2016 with a partial approval, partial disapproval, and an accompanying FIP that would impose source-specific SO<sub>2</sub> controls on certain Texas EGUs (81 FR 295) under the reasonable progress requirements. Texas and other stakeholders challenged the action, obtaining a July 2016 judicial stay from the Fifth Circuit Court of Appeals. In December 2016, EPA requested and was granted a voluntary remand of the entire rule without vacatur.
- Proposed Rule for EGU BART in Texas: On January 4, 2017, we published a proposed rule. The notice proposed to: 1) partially disapprove a portion of the Texas SIP pertaining to particulate matter (PM) BART for EGUs; 2) address BART for EGUs through a FIP including source-specific BART on 29 units at EGUs for PM and SO<sub>2</sub>; 3) a finding that NO<sub>x</sub> BART is met by participation in the updated Cross-State Air Pollution Rule (CSAPR), as updated; and 4) reconsider and disapprove portions of several SIP revisions submitted to satisfy interstate transport for six NAAQS; and, determine that BART, as proposed in the notice, would meet interstate visibility transport requirements, necessitating no further FIP measures.
- Final EGU BART Rule: Subject to a Consent Decree deadline<sup>1</sup>, EPA finalized the Texas Regional Haze BART and Visibility Transport FIP (82 FR 48324, October 17, 2017). Prior to this final action, EPA and the State of Texas signed a Memorandum of Agreement (MOA) where Texas agreed to submit a SIP to EPA by October 31, 2018 to address the BART requirements. In our October 17, 2017 final action we: 1) finalized an alternative to BART that consists of an intrastate trading program addressing the SO<sub>2</sub> emissions from certain EGUs, with the first year of compliance being 2019; 2) finalized our proposed determination that Texas' participation in the CSAPR trading program for ozone-season NO<sub>x</sub> qualifies as an alternative to BART; 3) approved Texas' determination that its EGUs are not subject to BART for PM; and 4) disapproved portions of several SIP revisions submitted to satisfy the interstate visibility transport for six NAAQS; and, found that the BART alternatives to address SO<sub>2</sub> and NO<sub>x</sub> BART at Texas' EGUs meet the interstate visibility transport requirements for these NAAQS.

<sup>1</sup> This action is subject to two Consent Decrees (one for BART and one for Visibility Transport); both are in District Courts for the District of Columbia, and both had the same final action deadline.